CAMPAIGN FINANCE/McCain-Feingold Substitute

SUBJECT: **Paycheck Protection Act . . . S. 1663. McConnell motion to table the McCain/Feingold substitute amendment No. 1646.**

ACTION: MOTION TO TABLE FAILED, 48-51

SYNOPSIS: As introduced, S. 1663, the Paycheck Protection Act of 1998, will prohibit corporations and unions from assessing workers dues or fees that will be used for political activities unless those workers give prior written, voluntary permission for such assessments.

The McCain/Feingold substitute amendment would make all political party contributions subject to strict "hard-money" limits, and would broaden the definition of "express advocacy" (which would make much more of the political speech of independent groups subject to strict contribution limits and reporting requirements). The text of the amendment is identical to the text of the McCain/Feingold campaign finance bill considered last session (see 105th Congress, 1st session, vote Nos. 266-267, 270, and 273-274). Details are provided below.

- New restrictions on political parties. All contributions to national political parties would be regulated as "hard-money" contributions. (The term "hard money" refers to a contribution the size of which is limited by law, and which is subject to extensive reporting requirements; the term "soft money" refers to a contribution the size of which is not limited by law. Currently, contributions to political parties that are to be used for expressly advocating the election or defeat of particular candidates are subject to hard-money restrictions, and contributions for generic party activities are regulated as soft-money contributions.) Also, State, district, and local party expenses would be regulated as Federal party expenses unless they were solely for State/local elections.
- Background on independent expenditures. An independent expenditure is an expenditure that expressly advocates the election or defeat of a candidate and that is made independently of any candidate's campaign (if it is made in consultation with a candidate's campaign it is generally considered a coordinated expenditure and thus a contribution to that candidate, though it is an open question as to whether that formulation is constitutional; it has not been decided to what degree, if any, the right to engage in express

(See other side)

YEAS (48)

Republicans (48 or 87%)		Democrats (0 or 0%)
Abraham	Hatch	
Allard	Helms	
Ashcroft	Hutchinson	
Bennett	Hutchison	
Bond	Inhofe	
Brownback	Kempthorne	
Burns	Kyl	
Campbell	Lott	
Coats	Lugar	
Cochran	Mack	
Coverdell	McConnell	
Craig	Murkowski	
D'Amato	Nickles	
DeWine	Roberts	
Domenici	Roth	
Enzi	Santorum	
Faircloth	Sessions	
Frist	Shelby	
Gorton	Smith, Bob	
Gramm	Smith, Gordon	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thurmond	
Hagel	Warner	

NAYS (51)

Republicans (7 or 13%)	Democrats (44 or 100%)	
Chafee	Akaka	Johnson
Collins	Baucus	Kennedy
Jeffords	Biden	Kerrey
McCain	Bingaman	Kerry
Snowe	Boxer	Kohl
Specter	Breaux	Landrieu
Thompson	Bryan	Lautenberg
	Bumpers	Leahy
	Byrd	Levin
	Cleland	Lieberman
	Conrad	Mikulski
	Daschle	Moseley-Braun
	Dodd	Moynihan
	Dorgan	Murray
	Durbin	Reed
	Feingold	Reid
	Feinstein	Robb
	Ford	Rockefeller
	Glenn	Sarbanes
	Graham	Torricelli
	Hollings	Wellstone
	Inouye	Wyden

NOT VOTING (1)

Republicans (0)	Democrats (1)
	Harkin-[2]

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

advocacy can be conditioned on one's giving up one's right to exercise other constitutional freedoms, such as the right to petition the government or associational rights). In *Buckley* v. *Valeo* (424 U.S. 1, 44-45 (1976) (per curiam)), the Court ruled that restrictions on both contributions and expenditures in elections are restrictions on core First Amendment free-speech and associational rights. Such core liberties can only be limited if they pass the Court's "strict scrutiny" test: the Government must have a compelling reason for infringing, and it must use the least restrictive means possible to achieve its ends. The Court found that the need to avoid corruption or the appearance of corruption (a "quid pro quo") in the election of particular candidates justifies restricting contributions, but it does not justify restricting expenditures. It further found that contributions for independent expenditures can only be restricted if they are for "communications that in express terms advocate the election or defeat of a clearly identified candidate." The Court found no justification for restricting contributions for "issue" advocacy. Therefore, it drew a "bright line" test that makes a clear demarcation between issue advocacy, such as criticizing a legislator for voting against a particular bill, and express advocacy. Any vagueness in the test would be unconstitutional. It found that express advocacy has to "include explicit words of advocacy of election or defeat of a candidate" before it can be regulated.

- New restrictions on independent expenditures. The substitute amendment would change the Supreme Court's definition of the term "express advocacy" to mean: using express words in favor of or in opposition to a candidate; using "words that in context have no reasonable meaning other than to advocate the election or defeat of 1 or more clearly identified candidates; using the name of a candidate in any paid broadcast advertisement 60 days before an election; or "expressing unmistakable and unambiguous support for or opposition to 1 or more clearly identified candidates when taken as a whole and with limited reference to external events, such as proximity to an election." For purposes of voting records and voting guides, the term "express advocacy" would not apply to printed communications: that presented "information in an educational manner" on the voting records of 2 or more candidates; that were made independently; that did not contain express words such as "vote for"; and that did not contain "words that in context can have no reasonable meaning other than to urge the election or defeat of 1 or more clearly identified candidates." New reporting requirements would be placed on independent expenditures.
- New restrictions on any independent speech. The amendment would make any communication made by an independent party "for the purpose of influencing a Federal election (regardless of whether the communication is express advocacy)" that referred to a candidate and that was made in consultation with a candidate subject to hard-money limits.
- Limits on independent and coordinated expenditures by political parties. A political party would not be permitted to make independent expenditures in an election once its nominee had been selected. Coordinated expenditures by political parties with candidates' campaigns would be defined as anything of value "provided in coordination" for the purpose of influencing a Federal election, "regardless of whether the value being provided is a communication that is express advocacy". "In coordination" would be defined to cover a wide range of communications and activities, including the offering of advice or information.
- Miscellaneous. All candidate and other reports would be filed electronically and the Federal Election Commission (FEC) would post them within 24 hours of receipt on the Internet. Contributions over $200 to a candidate would not be used until all required information on the contributor was provided. The FEC, by majority vote, would perform random audits of campaigns after they were over. The names and addresses of contributors of amounts between $50 and $200 would be reported. Contributions would not be solicited by falsely claiming to represent a candidate, a political committee, or a political party. New reporting requirements would be placed on soft-money expenditures. New requirements on the content of candidates' advertising would be enacted; the intent of those requirements would be to identify those candidates as being responsible for the content of their advertisements. If a candidate agreed to spend less than $50,000 on his or her election, he or she would be entitled to matching public funds to the extent an opponent spent more than $50,000 of personal funds. Labor unions would be required to inform those nonunion members who were required to make payments to them for collective bargaining of the procedures they could use to receive reimbursement for political activity expenditures not related to collective bargaining (no protection would be provided for union workers; for related debate, see vote No. 17). A candidate would not be allowed to use campaign funds for personal purposes. Members running for reelection would not be allowed to use the frank for mass mailings in the year before the election. It would be illegal to solicit election funds from a Federal building (it is already illegal to do so). The monetary penalties for various campaign violations would be increased. The current ban on accepting contributions from foreign nationals would be strengthened. Contributions from minors would be banned. If any part of the amendment were found unconstitutional, the rest of the amendment would remain in effect. Any court decision under this amendment would be appealable directly to the Supreme Court.

Debate was limited by unanimous consent. Following debate, Senator McConnell moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The McCain/Feingold amendment is unconstitutional, unwise, partisan, and unworkable. We are as adamantly opposed to it now as we were last year. The Senate remains at an impasse. A large number of Senators firmly believe that the Federal Government should restrict the amount of spending on political campaigns (but should not restrict unions and corporations from taking money from workers against their will to spend on politics). Roughly the same number of Senators are convinced that the proposed

spending restrictions, if they were put in place, would destroy our democracy.

In the 1976 *Buckley* v. *Valeo* decision, the Supreme Court correctly decided that both political contributions and expenditures involve free speech, and thus they cannot be limited unless the least restrictive means are used and the limitations are necessary to serve a compelling government interest. It found no justification for involuntary limits on expenditures: it said that trying to equalize speaking power was "wholly foreign to the First Amendment." Only totally voluntary limits on expenditures, which the Government could encourage with its own generous donations, were held to be constitutional. On contributions, it decided that giving assistance implicates lesser speech interests because it merely facilitates, or associates the contributor with, the speech of the candidate. Thus, the bar for limiting contributions is lower. It further found that the Government's interest in preventing corruption or the appearance of corruption justifies placing limits on the size of contributions that may be given to candidates, political parties, political action committees, or other groups that engage in express advocacy. The Court then drew a razor-sharp distinction between issue advocacy and express advocacy. It said that individuals and organizations that act independently of particular candidates and that use express words either in favor of or in opposition to particular candidates are engaging in political speech that may be regulated. If such individuals or organizations do not use such words, that speech must be considered issue advocacy that is totally beyond regulation. Since the Buckley decision, the FEC has expended considerable resources in efforts to broaden the Supreme Court's definition of express advocacy, but one court case after another has confirmed the absolute requirement for express words of advocacy.

As modified, this bill contains two key sections. First, it will place strict contribution limits on all contributions to political parties. Those limits are of questionable constitutionality. Contributions to political parties that are for the purpose of electing or defeating particular candidates have been subject to limits for the past 25 years. However, the FEC has allowed political parties to raise money for party-building and similar activities without limits on the size of contributions. The case that comes closest to giving an indication of how the Supreme Court will rule on the constitutionality of saying that all party contributions may be limited is *Colorado Republican Federal Campaign Committee* v. *FEC* (116 S.Ct. 2309 (1996)), which established that a party can act independently to work for the election or defeat of a candidate. That principle logically leads to the conclusion that if the party acts independently of the candidate, then any claim of corruption is pretty attenuated. Still, the independent expenditures in that particular case were made with funds subject to contribution limits. The contribution limits for political parties may be upheld.

The second main section of this bill is a section that will adopt a new definition of the term "express advocacy" in an effort to limit political expenditures that do not expressly advocate the election or defeat of particular candidates. This new definition is clearly unconstitutional. Almost all of the litigation on campaign finance in the last 20 years has centered around the Supreme Court's definition, as the FEC has tried to make campaign finance laws apply to groups that speak out on political issues, politicians, and candidates. At least 16 separate cases have affirmed that the only permissible restrictions on independent political speech are on speech that in express terms (such as by saying "vote for") advocate the election or defeat of a particular candidate or candidates. Though the FEC has continually lost in its court battles, its efforts have still had a chilling effect; the threat of costly litigation has kept many smaller, less wealthy organizations from daring to criticize particular Members.

Our colleagues have largely rested their argument on the constitutionality of their new definition on the decision in *FEC* v. *Furgatch* (807 F. 2d 857 (9th Cir. 1987). That highly questionable decision (which of course came from the infamous 9th Circuit) allowed a subjective determination to be made in deciding if an expenditure constituted express advocacy, but only in the very narrow circumstance of reporting expenditures. Though that ruling was expressly repudiated by other courts, it was greatly expanded upon by the FEC in its regulations. This bill directly plagiarizes those FEC regulations. This fact is highly important, because the Supreme Court has upheld a ruling that the FEC's regulations are unconstitutional. The other major claim of constitutionality that our colleagues make for this bill is that 126 scholars at the Brennan Institute endorsed it. However, those scholars only said the spending limits (which have been dropped) and the party contribution provisions were constitutional; they specifically said they could not come to agreement on the constitutionality of the other provisions. They were conspicuously silent on the ability to restrict issue advocacy by redefining it as express advocacy.

The arguments of constitutionality aside, however, the intent of this bill is simply wrong. Our colleagues want to control the amount of speech in elections. The reality is that elections for Federal office have large numbers of voters and the only way candidates, or others, can reach those voters effectively is through broadcasting. If spending is limited, whether through "voluntary" limits or harassment from FEC officials, broadcasting will be cut, and democracy will suffer. Democracy cannot exist without free speech. The First Amendment right to free speech is much more than a guarantee of a personal liberty; it is a guarantee of a personal liberty that safeguards our republic and all other civic and personal liberties. As James Madison put it: "the right of electing members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust; and on the equal freedom, consequently of examining and discussing these merits and demerits of the candidates respectively." Our Founding Fathers, and the political philosophers from whom they drew, were very familiar with political censorship, and with the arguments in favor of political censorship by the government, and they firmly rejected it. They did not try to guarantee that each person gained the same equal ability to be heard by restraining some and encouraging others. For instance, when they ensured the right to a free press, they well understood that the right could only be exercised by those people with enough resources and energy to own a press.

Our colleagues, though, do not think it is right that some people can spend more on elections than can others; they think that ability violates the "one-man-one-vote" principle. They assume that the right to vote carries with it the implicit right to have an equal opportunity to influence others' votes. However, if they are going to take that position, then they cannot logically defend any other inability to spend equally on any other speech intended to affect the Government. Why say that all Americans must have an equal ability to influence an election, but not to criticize the Government or a Member through a press article or network news broadcast, or to organize a political rally, or to hire trade lawyers to lobby on a very arcane point of trade law, or to engage in any other normal form of political discourse? Suppose a small minority of Americans were going to be severely hurt by a proposed policy; would it be fair to say that they could not spend more so that more Americans would hear and know the justness of their cause? If not, they would be held to minimal spending as represented by their numbers, and would suffer accordingly. Relatedly, our colleagues say that spending needs to be reduced to cut the influence of "special interests," both to make the campaigns reflect the "real" issues and to stop politicians from supposedly catering to those special interests once elected. In response, we note that numerous studies show that Members' votes are determined primarily by party and ideology considerations, not by contributions. We also note that it is normal, and we believe that it is appropriate, for legislators to respond disproportionately to the interests of some constituents, depending, for example, on their degree of organization or the intensity of their interest on particular issues. Unlike our colleagues, we do not think that it is inappropriate to have this type of pluralist democracy. We reject the implicit assumption that either legislators are to serve as patrician arbiters of competing interests rather than pursuing those ends that they support, or that we should have populist decision-making via polling data to determine the one-man-one-vote decision on every issue. In addition to these broader issues, our colleagues have also given their usual reasons for limiting spending by saying that they want to get rid of the reelection advantage for incumbents (most Republicans favor the more direct approach of getting rid of all incumbents with term limits), and that they think they have to spend too much time raising campaign money (maybe they do, but we spend less than 30 minutes per week, and most of that time is spent raising funds for other candidates in our party).

In prior years, our colleagues have pursued their ill-advised attempts to limit spending by trying to pass coercive spending limits. The McCain/Feingold amendment proposes an even more dangerous way to limit spending. Under this amendment's broad definition of "express advocacy," literally any public communication about a Member or any candidate would likely be construed as an effort to elect or defeat that candidate. For instance, simply mentioning a Member's name in a broadcast within 60 days of an election would be considered express advocacy and therefore subject to reporting requirements and contribution limits. Also, any broadcast at any time that the FEC speech police said could have no "reasonable" interpretation other than that it was express advocacy would be deemed to be express advocacy. The reason our colleagues have for this approach is that they say that other political activities, like lobbying or criticizing a Member can have an influence on an election. Of course they can, but that does not justify suspending the Constitution. Under our colleagues' formulation, we imagine the favorite time for Members to pass new taxes would be right before an election, because then tax relief groups would not be allowed to criticize them for the next 2 months, until after they were safely reelected. Similarly, they would wait to right before elections to have controversial votes on abortion, the environment, and other issues. The examples of harm that would come from these proposed speech restrictions are endless. Suppose the Sierra Club wanted to run issue-advocacy commercials at the end of a campaign that mentioned a Member's name? Under this bill, they would be deemed express advocacy commercials, which would force the Sierra Club to release the names of its donors. Constitutionally, since the decision in *Alabama* v. *NAACP*, it has been well established that people have the right to engage in political debate anonymously (NAACP supporters in southern States feared being identified publicly); according to this bill, Sierra Club supporters who lived in States like Alaska and who consequently wanted to remain anonymous would not be allowed to communicate. They would lose their constitutional right to express their opinions anonymously for 2 months. If they expressed their opinions, it would be under contribution limits. Though the 2-month restriction is easier to understand, the "reasonable" standard proposed by our colleagues is actually much more dangerous. For example, the lead Democratic sponsor of this bill, Senator Feingold, is an ardent defender of partial-birth abortions, and made some comments on the Senate floor that many listeners found horrifyingly close to being an endorsement of infanticide. If pro-life groups were to broadcast advertisements at any time criticizing Senator Feingold for those statements, would the FEC say that there was any reasonable doubt that the sponsors of those advertisements would like to see him defeated? How would our colleagues, or rather FEC speech police, make the distinction between advocating a policy and advocating the defeat of a candidate? Obviously those groups would like to outlaw partial-birth abortions; could they only express an opinion if they somehow managed to convey the impression that it did not matter to them one way or another if the Senator being criticized were reelected? During the debate last fall, our colleagues noted that Great Britain had the type of restrictions on independent expenditures that they want to impose. We note that since that time the European Court of Human Rights has declared that those British limits violate human rights.

A couple of points need to be made on the extremely partisan nature of this debate. Even a casual observer would have to have noticed that most of the Senators trumpeting the virtues of this legislation are Democrats, and all of its opponents are Republicans. There are two main reasons for this division. The first reason is that the Republican Party relies more heavily on party contributions than does the Democratic Party. The strict new limits on party contributions and spending, therefore, would cause more immediate problems for Republicans than for Democrats. (Democrats rely more heavily on union spending, which may explain why they

oppose efforts to stop unions from taking money from their members against their wishes to spend on politics).

The other major reason for the partisan divide is that Republicans seem to be more concerned than are Democrats with investigating and prosecuting Clinton Administration and Democratic Party officials for violations of existing campaign finance laws. It is against the law to solicit or to receive campaign contributions from a Federal building; the Vice President did so from his office; it is against the law to offer a Government benefit in return for a campaign contribution; the President wrote a memo saying, "Start the overnighters" and people started getting to stay overnight at the White House for an average political contribution of more than $107,000 each; it is illegal to receive foreign contributions, yet the Democratic National Committee took numerous such illegal contributions in the last election. Democrats look at all of the sordid revelations involving their party in the last election and conclude that it is a real shame that we have a campaign finance system that results in such activity. Republicans, on the other hand, wonder what good it would do to pass even more laws if the current laws are not enforced. If this amendment were to become law the initial effect would be chaos, as court challenges were made to various provisions. The next effect would likely be partisan, as restrictions on parties were upheld and restrictions on unions fell. The final effect would be no effect on the amount of money raised and spent on political activities. The amount of political spending of all types has grown in recent decades, but the reason has nothing to do with unartfully drafted campaign finance laws: that growth was inevitable, because the Federal Government has grown enormously, making the need for people to get involved in politics that much greater. (Frankly, considering the amount of money taken from the people in taxes by the Government and its intrusiveness in so many parts of their daily lives, we are surprised that more is not spent on elections. For instance, the average amount spent on two entire congressional campaigns is only enough money to pay for one 30-second Super Bowl commercial.) The restrictions that have been passed have not worked because they could not work. If people have a vital interest for wanting to be heard in a campaign, and if restrictions are put on particular avenues for them to participate, they will then just find other avenues. The only way to stop those people from getting involved (which we do not want to do) will be to close all avenues for effective free expression. Putting more restrictions on candidates will move more money to political parties; putting more restrictions on political parties will move more money to independent express advocacy expenditures; putting more restrictions on those expenditures will result in more issue advocacy expenditures; putting restrictions on those expenditures will result in more press expenditures. That is the path our liberal colleagues have followed to date. The final step, which they do not yet favor, will be to put restrictions on the press, and thus to control every means of having effective political communications.

Our colleagues are still complacent about the media's influence on elections because they view the world through the same liberal blinders as do reporters, more than 90 percent of whom say they are Democrats (and no doubt most of the rest of whom think Democrats are too conservative). Media outlets incur costs when they make their endorsements and give their slanted coverage of campaigns, and those costs already dwarf the amounts spent from all other sources on every election. If our colleagues ever succeed in their efforts to limit other forms of campaign and political speech, the obvious result will be that those groups that have a vital interest in influencing elections will buy media outlets. We think our liberal colleagues will then have a sudden change of heart--they will suddenly perceive that the right to a free press should not be a right exercised by mean conservatives who can buy networks and then run editorials against nice liberals. Such a right would clearly be a violation of the one-man-one-vote principle.

There is a wide gulf between Members at this point. Supporters of the McCain/Feingold amendment are determined to enact unconstitutional and undemocratic restrictions on political free speech. Opponents of the McCain/Feingold amendment will not accept such restrictions. If any compromise is ever reached, it will be on such issues as immediate internet reporting of campaign contributions, a simplification of current laws and regulations, tougher penalties for illegal contributions from foreign sources, and a ban on involuntary campaign contributions. It emphatically will not be reached by making a blatantly unconstitutional, partisan, and undemocratic effort to restrict speech a little less blatant. If supporters want to continue to play brinksmanship, and negotiate compromises between themselves, the Senate will remain at an impasse. We will vote to table this amendment, and all similar amendments, and will likely fail, though we know we will have enough votes to prevent cloture. This impasse will last until our colleagues are willing to work with us to write and to pass a campaign finance bill that is bipartisan and constitutional, and that will advance rather than impede political debate.

Those favoring the motion to invoke cloture contended:

Congress passed the Federal Election Campaign Act (FECA) in 1974 to limit the amount that any one source could give to a candidate and to limit the amount that could be spent on behalf of a candidate. That law only stood for 2 years before the Supreme Court's *Buckley* v. *Valeo* decision. That decision basically upheld limiting the amounts that could be contributed to candidates but said that the amounts spent by or on behalf of candidates could not be limited. That decision began a gradual erosion of the FECA limits on money in campaigns. Spending had been drastically cut in 1974, but after the Buckley decision contributors gradually learned how to evade the limits by giving to organizations not directly connected to candidates. The result has been that Americans are increasingly disgusted with elected officials. They believe that they represent the special interests that spend money to get them elected instead of the vast majority of the American people. In the last election, less than 50 percent of eligible voters even bothered

to vote. Our colleagues say they do not want to restrict spending because they are worried about preserving democracy; we believe that it is our failure to enact a campaign finance reform bill that is destroying democracy.

The average cost of running for Federal office has gone up severalfold since 1976. At one time, the Senate scheduled its fundraisers around its legislative activities; now it commonly schedules its legislative activities to make sure they do not conflict with its fundraisers. Additionally, this spending does not affect any of the "independent" spending that comes from political parties and other groups. Many Senators are retiring because they do not want to continue the money chase and because they do not want to have to put up with anonymous 30-second attack ads against them in their campaigns. Any Senator who wants to continue the game, though, is virtually assured of reelection, because most incumbents are consistently able to raise two to three times as much money as their challengers. The problem is so bad that we are starting to have scandals on the order of Watergate. For instance, the public has been rightly outraged by some of the scandals that have been recently reported in connection with President Clinton's campaign, such as the $100,000 per person coffee klatsches that were held. In hearings on those scandals, some witnesses candidly said that they gave money to get influence, but they did not bother to vote because they did not think it made a difference. Sadly, we think they are right. The principle of "one-man-one-vote" has been replaced by "money talks."

All of this problem has come about because of the Buckley decision. That decision equated money with speech in a Federal campaign. However, we believe that the free speech protection of the First Amendment is intended to make sure that everyone has the right to speak his or her mind without being sanctioned for the views he or she expresses. It most assuredly is not intended to protect the right of rich Americans and rich organizations to give massive amounts of money to candidates who represent their views, and thus end up with insurmountable advantages over candidates of modest means who represent views held by Americans of similarly modest means. Endorsing that proposition is equivalent to abandoning the one-man-one-vote principle.

Though we believe that the Buckley decision was wrongly decided, we have tried to work within its framework. Over the past several years we sponsored bills intended to limit campaign contributions and spending. We thought that the provisions of those bills were constitutional; many of our colleagues disagreed. Usually they objected to our formulations for voluntary spending limits and to our provisions on PACs. Therefore, we have compromised greatly in this bill by dropping most of our spending limit and PAC proposals. Instead of supporting the bill, though, our colleagues have now found new complaints. They are raising fierce objections to the new proposed restrictions on so-called "issue advocacy" advertisements. Most of the negative television commercials that have polluted recent campaigns are such advertisements. They are clearly intended to advocate the election or defeat of candidates, yet they escape totally from contribution and reporting limits just because they avoid the magic words "vote for" or "vote against." This bill will close that loophole by establishing new "bright line" tests for deciding when commercials are really election commercials rather than issue advertisements.

The three main sources for non-candidate spending are political parties, unions, and PACs. PAC spending is roughly split between the parties; the Republican Party has an advantage in getting party contributions; unions spend primarily on behalf of Democratic interests. This bill will subject almost all of that money to strict contribution and reporting limits. Rich interests will no longer be able to contribute millions of dollars; contributions will be small, and they will be disclosed. Spending will still be unlimited as long as these rules are not broken. We have a letter from 126 scholars at the Brennan Center on the constitutionality of this bill, and we also note that the court cases on this issue are not as clear as our colleagues say. We are confident that all of the provisions of this bill will be upheld. If not, the court will strike down those provisions which it says are unconstitutional, and we will try to find new ways to act within its strictures. That course of action is the course we are supposed to follow. We legislate as we believe appropriate, and the Supreme Court makes constitutional corrections.

Unfortunately, due to the way campaigns are financed, Americans are losing confidence in their Government. They are right to be losing that confidence. Competing rich interests run campaigns to determine which rich interests the Government will serve. Matters have only gotten worse since we debated this issue last fall. The California special election for a House seat that is currently underway dramatically underscores the problem. Millions of dollars have already been spent by special interest groups on so-called issue ads that are clearly intended to influence the outcome of that race. The candidates in that race have no control over those ads, which are overwhelmingly negative in tone. It is little wonder that Americans are increasingly disgusted with politics. We need to end the corrupt influence of money in politics if we are going to restore Americans' faith in their democracy. The McCain/Feingold amendment would end that corrupt influence. We urge our colleagues to oppose the motion to table.